IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.13 OF 2005
IN
NOTICE OF MOTION NO.520 OF 2004
IN
SUIT NO.452 OF 2004

M/s.Samarth Cash Machines
Pvt. Ltd. & Ors. ..Appellants

Vs.

Sanjay Jayantilal Raja
& Ors. ..Respondents.

Mr.Birendra Saraf i/b.Kiran Jain & Co., Avocate for the Appellants.

Mr.M.V.Thakkar i/b.M/s.Hariani & Co., Advocate for Respondent Nos.1 and 2.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 17TH JANUARY, 2005

P.C. :

By consent, the Appeal is admitted, placed on board and taken up for final hearing.

2. The Appellants/Respondent Nos.1 to 4 have challenged the order of the learned Single Judge dated 29.9.2004 taking on record consent terms arrived at between the Plaintiffs and Defendant Nos.5, 6, 9 and 10. The Appellants opposed the consent terms being taken on record on the ground

that they had a right in the property which was the subject matter of the consent terms viz. Shop Nos. 1 and 4. The learned Judge accepted the consent terms subject to whatever rights Defendant Nos.1 to 4 may have in the property. The learned Judge also recorded that the Plaintiffs had given up their claim against Defendant Nos.7 and 8 and the undertaking given by the Plaintiffs about withdrawing the Writ Petition.

3. We do not read the impugned order as having permitted the consent terms to be taken on record pursuant to any decision that Defendant Nos.1 to 4 do not have any right in respect of the said shops for any reason. The learned Judge has not adjudicated upon any issues between the Appellants and the other parties in the suit including the parties to the consent terms. The observation that there is no registered conveyance in the Appellant’s favour is a mere casual observation. This is clear from the fact that the learned Judge has not even decided the consequence of the conveyance not being registered. The learned Judge has merely recorded that Defendant Nos.1 to 4 do not have a registered conveyance in their favour in respect of these shops. Indeed, the learned Judge has expressly

stated that the suit against Defendant Nos.1 to 4 shall continue and that the consent terms are only between the parties who are signatories thereto. The said consent terms are merely an agreement between the parties thereto and nothing contained therein or in the impugned order can affect the rights of the Appellants in any manner whatsoever. We reject the suggestion that the consent terms can be executed without reference to the Appellants. Consent terms/consent decrees are binding and are of effect only between the parties thereto. Nothing contained therein can in any manner affect the rights of strangers to the consent terms even if they are parties to the proceedings. Any view to the contrary would lead to dangerous consequences and permit parties to adversely affect the rights of third parties.

5. Mr.Saraf, the learned counsel appearing on behalf of the Appellants contended that the Plaintiff has no right in the property. On the other hand, on behalf of the Respondents, it was contended that Defendant Nos.1 to 4 do not have a registered conveyance in their favour in respect of the said shop and that therefore they have no right therein. These rival contentions are not relevant

for the present purpose. The only thing that need be said at this point of time is that the consent terms may be taken on record with the express condition that nothing contained therein, does, can or shall affect the rights of any of the parties other than the parties to the consent terms. It will not be open to the parties to the consent terms in any proceedings to question, challenge or in any manner seek to affect the rights of the Appellants on the basis of the consent terms. No application made or submission urged on behalf of strangers to the consent terms including Defendant Nos.1 to 4 shall be adversely affected in any manner whatsoever by virtue or reason of anything contained in the consent terms. Further, all the contentions of Defendant Nos.1 to 4 regarding the consequences of such consent terms having been arrived at including that they stand discharged of their liabilities in view thereof, are kept open.

6. The Appeal is accordingly disposed of.